

## Internal Revenue Service

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### Legend

Parent =

Distributing 1 =

Distributing 2 =

Distributing 3 =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

LLC =

n

Country A =

Business A =

Business B =

Business C =

Business D =

x =

y =

State A =

Z Industry =

Dear :

This letter responds to your September 15, 2006 letter requesting rulings on certain federal income tax consequences of a series of proposed transactions. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the

distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355 (a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

### **Summary of Facts**

Parent, a Country A corporation, is the common parent of a corporate group composed of various domestic and foreign corporations engaged in Business A, Business B, Business C, and Business D. Parent wholly owns Distributing 3.

Distributing 3 owns all of the common stock of Distributing 2 and all of the common stock of Sub 4. Distributing 2 owns all of the common stock of Distributing 1 and Sub 4 owns all of the preferred stock of Distributing 1. Distributing 1 owns  $x$  percent (less than 50-percent) of the common stock of Controlled. Sub 1 owns the remainder of the outstanding stock of Controlled, representing  $y$  percent (greater than 50-percent). Distributing 1 also owns 100-percent of the common stock of Sub 2. Sub 2 is actively engaged in Business A. Controlled owns 100-percent of the common stock of Sub 3. Sub 3 is actively engaged in Business D. Distributing 1, Distributing 2, Distributing 3, Sub 1, Sub 2, Sub 3, Sub 4, and Controlled file a consolidated federal income tax return, with Distributing 3 as the common parent of the U.S. affiliated group (the "Distributing 3 Consolidated Group").

Financial information has been received indicating that Business A (as conducted by Sub 2) and Business D (as conducted by Sub 3) has each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years preceding the proposed transaction.

### **Pre-Distribution Transaction**

Immediately prior to the Proposed Distribution, Distributing 1 will form LLC, a State A limited liability company, which Distributing 1 will be the sole member. Sub 1 will merge with and into LLC under State A law. LLC will not make an election to be treated as an association for U.S. federal income tax purposes, and is intended by the parties that the merger be treated as a liquidation of the assets of Sub 1 (including the stock of Sub 1) to Distributing 1.

### **Proposed Transaction**

In order to accomplish the stated business purposes, Distributing has proposed the following transaction to separate its Business A from its Business D: (collectively the "Proposed Transaction"):

- (i) Distributing 1 will distribute all of the outstanding stock of Controlled to Distributing 2 (the "Internal Distribution 1").
- (ii) Distributing 2 will distribute all of the outstanding stock of Controlled to Distributing 3 (the "Internal Distributing 2").
- (iii) Distributing 3 will distribute all of the outstanding stock of Controlled to Parent (the "External Distribution").

### **Representations**

The taxpayer makes the following representations regarding the Internal Distribution 1 described above in step (i):

- (a) Internal Distribution 1 will occur within one year of receiving the rulings requested herein.
- (b) Distributing 1 and Controlled each will pay its or their own expenses, if any, incurred in connection with Internal Distribution 1.
- (c) Internal Distribution 1 is not part of a plan or series of related transactions (within the meaning of Treas. Reg. §1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of any such corporation).
- (d) The indebtedness, if any, owed by Controlled to Distributing 1 after Internal Distribution 1 will not constitute stock or securities.
- (e) Other than trade account indebtedness created in the ordinary course of business through continuing transactions and payables created for any transitional services reflecting the fair market value of providing these services, no intercorporate debt will exist between Distributing 1 and Controlled at the time of or subsequent to Internal Distribution 1.
- (f) No part of the consideration to be distributed by Distributing 1 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (g) Sub 2 will constitute a member of the affiliated group of Distributing 1 within the meaning of § 355(b)(3) at the time of Internal Distribution 1. Sub 3 will constitute a member of the affiliated group of Controlled within the meaning of § 355(b)(3) at the time of Internal Distribution 1.

(h) No person will hold a 50-percent or greater interest in the stock of Distributing 1 or Controlled, after Internal Distribution 1, within the meaning of § 355(g), who did not hold such an interest immediately before the transaction.

(i) Sub 1 will merge with and into a newly formed single-member LLC before Internal Distribution Date 1, with Distributing 1 as its sole member. Sub 1 will not elect to be treated as an association for federal income tax purposes. Moreover, the fair market value of Sub 1's assets will exceed its respective liabilities, both at the date of adoption of the merger plans and immediately before the time when the merger will occur.

(j) The five years of financial information submitted on behalf of Sub 2 is representative of Sub 2's present operations, and with regard to Sub 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(k) The five years of financial information submitted on behalf of Sub 3, Controlled's wholly-owned subsidiary, is representative of Sub 3's present operations, and with regard to Sub 3, there have been no substantial operational changes since the date of the last financial statements submitted.

(l) Following Internal Distribution 1, Distributing 1 (through Sub 2) and Controlled (through Sub 3) will continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(m) Subsequent to Internal Distribution 1, Distributing 1 and other members of its affiliated group may enter into certain mutually beneficial commercial arrangements with Controlled and its subsidiaries to service customers who seek bundled solutions. The compensation for such services will be an arm's-length price intended to reflect the fair market value of providing these services. Moreover, Distributing 1 and other members of its affiliated group may provide Controlled and its subsidiaries with transitional services, including tax support and treasury services. These transitional services are not expected to exceed 12 months. Any compensation paid for such services will be based on the actual costs incurred by the party rendering the service plus an arm's-length premium.

(n) Internal Distribution 1 is carried out for the corporate business purpose of facilitating the External Distribution. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.

(o) Internal Distribution 1 is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.

(p) For purposes of § 355(d), immediately after Internal Distribution 1, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on Internal Distribution Date 1.

(q) For purposes of § 355(d), immediately after Internal Distribution 1, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1, or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1.

(r) Immediately before Internal Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; §1.1502-13 as published by T.D. 8597). Further, Distributing 1's excess loss account with respect to the stock of Controlled, if any, will be included in income before Internal Distribution 1 (see §1.1502-19).

(s) Neither Distributing 1 nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(t) As a result of Internal Distribution 1, Sub 4 is not entitled to any distribution by virtue of its ownership of Distributing 1 preferred stock, other than those distributions under the terms of the Distributing 1 preferred stock, which it is entitled to receive regardless of Internal Distribution 1.

The taxpayer makes the following representations regarding the Internal Distribution 2 described above in step (ii):

(u) Internal Distribution 2 will occur within one year of receiving the rulings requested herein.

(v) Distributing 2 and Controlled each will pay its or their own expenses, if any, incurred in connection with Internal Distribution 2.

(w) Internal Distribution 2 is not part of a plan or series of related transactions (within the meaning of §1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of any such corporation).

(x) The indebtedness, if any, owed by Controlled to Distributing 2 after Internal Distribution 2 will not constitute stock or securities.

(y) Other than trade account indebtedness created in the ordinary course of business through continuing transactions and payables created for any transitional services reflecting the fair market value of providing these services, no intercorporate debt will exist between Distributing 2 and Controlled at the time of or subsequent to Internal Distribution 2.

(z) No part of the consideration to be distributed by Distributing 2 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(aa) Sub 2 will constitute a member of the affiliated group of Distributing 2 within the meaning of § 355(b)(3) at the time of Internal Distribution 2. Sub 3 will constitute a member of the affiliated group of Controlled within the meaning of § 355(b)(3) at the time of Internal Distribution 2.

(bb) No person will hold a 50-percent or greater interest in the stock of Distributing 2 or Controlled, after Internal Distribution 2, within the meaning of § 355(g), who did not hold such an interest immediately before the transaction.

(cc) Following Internal Distribution 2, Distributing 2 (through Sub 2) and Controlled (through Sub 3) will continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(dd) Subsequent to Internal Distribution 2, Distributing 2 and other members of its affiliated group may enter into certain mutually beneficial commercial arrangements with Controlled and its subsidiaries to service customers who seek bundled solutions. The compensation for such services will be an arm's-length price intended to reflect the fair market value of providing these services. Moreover, Distributing 2 and other members of its affiliated group may provide Controlled and its subsidiaries with transitional services, including tax support and treasury services. These transitional services are not expected to exceed 12 months. Any compensation paid for such services will be based on the actual costs incurred by the party rendering the service plus an arm's-length premium.

(ee) Internal Distribution 2 is carried out for the corporate business purpose of facilitating the External Distribution. The distribution of the stock of Controlled is motivated, in whole or substantial part, by this corporate business purpose.

(ff) Internal Distribution 2 is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.

(gg) For purposes of § 355(d), immediately after Internal Distribution 2, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on Internal Distribution Date 2.

(hh) For purposes of § 355(d), immediately after Internal Distribution 2, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2, or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2.

(ii) Immediately before Internal Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; §1.1502-13 as published by T.D. 8597). Further, Distributing 2's excess loss account with respect to the stock of Controlled, if any, will be included in income before Internal Distribution 2 (see §1.1502-19).

(jj) The five years of financial information submitted on behalf of Sub 2 is representative of Sub 2's present operations, and with regard to Sub 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(kk) The five years of financial information submitted on behalf of Sub 3, Controlled's wholly-owned subsidiary, is representative of Sub 3's present operations, and with regard to Sub 3, there have been no substantial operational changes since the date of the last financial statements submitted.



(ll) Neither Distributing 2 nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

The taxpayer makes the following representations regarding the External Distribution described above in step (iii):

(mm) The External Distribution will occur within one year of receiving the rulings requested herein.

(nn) Distributing 3 and Controlled each will pay its or their own expenses, if any, incurred in connection with the External Distribution.

(oo) The External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. §1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 3 or Controlled (including any predecessor or successor of any such corporation).

(pp) The indebtedness, if any, owed by Controlled to Distributing 3 after the External Distribution will not constitute stock or securities.

(qq) Other than trade account indebtedness created in the ordinary course of business through continuing transactions and payables created for any transitional services reflecting the fair market value of providing these services, no intercorporate debt will exist between Distributing 3 and Controlled at the time of or subsequent to the External Distribution.

(rr) No part of the consideration to be distributed by Distributing 3 will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(ss) Sub 2 will constitute a member of the affiliated group of Distributing 3 within the meaning of § 355(b)(3) at the time of the External Distribution. Sub 3 will constitute a member of the affiliated group of Controlled within the meaning of § 355(b)(3) at the time of the External Distribution.

(tt) No person will hold a 50-percent or greater interest in the stock of Distributing 3 or Controlled, after the External Distribution, within the meaning of § 355(g), who did not hold such an interest immediately before the transaction.

(uu) Following the External Distribution, Distributing 3 (through Sub 2) and Controlled (through Sub 3) will continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(vv) Subsequent to the External Distribution, Distributing 3 and other members of its affiliated group may enter into certain mutually beneficial commercial arrangements with Controlled and its subsidiaries to service customers who seek bundled solutions. The compensation for such services will be an arm's-length price intended to reflect the fair market value of providing these services. Moreover, Distributing 3 and other members of its affiliated group may provide Controlled and its subsidiaries with transitional services, including tax support and treasury services. These transitional services are not expected to exceed 12 months. Any compensation paid for such services will be based on the actual costs incurred by the party rendering the service plus an arm's-length premium.

(ww) The External Distribution is an integral part of a global restructuring plan of aligning Business D conducted by Controlled and its subsidiaries under a worldwide holding company dedicated to that core business. Parent believes that such a worldwide restructuring will give each core business the independence required to use their dedication and entrepreneurship to focus on their clients and their service development and to move to the forefront of the development of the Z Industry. The distribution of the stock of Controlled is motivated, in whole or in substantial part, by this corporate business purpose.

(xx) The External Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled or both.

(yy) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing 3 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the External Distribution Date.

(zz) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the External Distribution Date, or (ii) attributable to distributions on Distributing 3 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(aaa) The five years of financial information submitted on behalf of Sub 2 is representative of Sub 2's present operations, and with regard to Sub 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(bbb) The five years of financial information submitted on behalf of Sub 3, Controlled's wholly-owned subsidiary, is representative of Sub 3's present operations, and with regard to Sub 3, there have been no substantial operational changes since the date of the last financial statements submitted.

(ccc) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; §1.1502-13 as published by T.D. 8597). Further, Distributing 3's excess loss account with respect to the stock of Controlled, if any, will be included in income before the External Distribution (see §1.1502-19).

(ddd) Neither Distributing 3 nor Controlled is an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows on Internal Distribution 1 (step (i)):

(1) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on its receipt of Controlled's common stock (§ 355(a)).

(2) No gain or loss will be recognized by Distributing 1 upon the distribution to Distributing 2 of all of the Controlled common stock (§ 355(c)).

(3) The holding period of the Controlled common stock received by Distributing 2 will include the holding period of Distributing 1 common stock with respect to which the Controlled common stock is distributed, provided that such Distributing 1 common stock is held as a capital asset on the date of Internal Distribution 1 (§ 1223(1)).

(4) As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled will be adjusted in accordance with Treas. Reg. §1.312-10(b).

Based solely on the information submitted and the representations made, we rule as follows on Internal Distribution 2 (step (ii)):

(5) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 3 on its receipt of Controlled's common stock (§ 355(a)).

(6) No gain or loss will be recognized by Distributing 2 upon the distribution to Distributing 3 of all of the Controlled common stock (§ 355(c)).

(7) The holding period of the Controlled common stock received by Distributing 3 will include the holding period of Distributing 2 common stock with respect to which the Controlled common stock is distributed, provided that such Distributing 2 common stock is held as a capital asset on the date of Internal Distribution 2 (§ 1223(1)).

(8) As provided in § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled will be adjusted in accordance with Treas. Reg. §1.312-10(a).

Based solely on the information submitted and the representations made, we rule as follows on the External Distribution (step (iii)):

(9) No gain or loss will be recognized by (and no amount will be included in the income of) Parent on its receipt of Controlled's common stock (§ 355(a)).

(10) No gain or loss will be recognized by Distributing 3 upon the distribution to Parent of all of the Controlled common stock (§ 355(c)).

(11) The holding period of the Controlled common stock received by Parent will include the holding period of Distributing 3 common stock with respect to which the Controlled common stock is distributed, provided that such Distributing 3 common stock is held as a capital asset on the date of the External Distribution (§ 1223(1)).

(12) As provided in § 312(h), proper allocation of earnings and profits between Distributing 3 and Controlled will be made in accordance with Treas. Reg. §1.312-10(b).

### **Caveats**

No opinion is expressed about the tax treatment of the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of any or all of

Distributing 1, Distributing 2, Distributing 3, and Controlled; (iii) whether the proposed transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); and (iv) the tax consequences of the Pre-Distribution Transaction.

### **Procedural Statements**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representatives.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)